IN THE HIGH COURT OF JUDIATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6194 OF 2004

Jinku Prasad Desai Gupta .. Petitioner.
Vs.
The State of Maharashtra & Ors. .. Respondents.

Mr.Abhay Patki for the petitioner.
Mr.D.A.Patil AGP for respondent nos.1 and 2.
Mr.P.M.Havnur for respondent no.3.

CORAM : D.B.BHOSALE, J.

DATED : 22ND SEPTEMBER, 2004

P.C.:

. Heard Mr.Patki, learned counsel for the petitioner, Mr.Patil, learned A.G.P. for respondent nos.1 and 2 and Mr.Havnur, learned counsel for respondent no.3.

2. This writ petition is directed against the order dated 17th July, 2004 passed by respondent no.2 holding that the petitioner has not produced any evidence to prove the commercial use as claimed by him and, therefore, the petitioner is not eligible for commercial unit. In this petition and in Writ Petition No.4844 of 2004 this court on 6th August, 2004 passed the following order:

"1. Writ Petition No.4844 of 2004 takes exception to the order passed by the Divisional Commissioner, Konkan Division dated 27th May, 2004 rejecting the Petitioner's Appeal No.SLUM/83/2004, whereas, Writ Petition No.6194 of 2004 questions the order passed by the Slum Rehabilitation Authority dated 17th July, 2004. In the order passed by the Divisional Commissioner, it is observed that the issue of eligibility cannot be gone into in the appeal, as the appeal was restricted to action under Section 33 and 38 of the Maharashtra Slum Areas (Improvement, Clearance and Rehabilitation) Act, 1975. The case of the Petitioner was that the issue of eligibility was still pending before the appropriate Authority. In the circumstances, direction was given to the appropriate Authority (Slum Rehabilitation Authority) to decide the said issue of eligibility. The Authority has found that the Petitioner is not eligible for commercial unit, as the evidence produced does not establish the position that the structure was used for

non-residential purpose before the datum line. That finding is questioned in the second Writ Petition. From the record, it appears that Petitioner has already been assured allotment of residential premises, as he has been found to be eligible therefor. However, the dispute is regarding entitlement of commercial unit also. The case of the Respondent/Builder is that the Petitioner was in occupation of only one room which was put into use for residence. Whereas, the grievance of the Petitioner is that the Petitioner was in possession of two different units being Room No.17 which was used for residential purpose and Shop No.2, which was originally in the name of HariOm General Stores, Parab Chawl. Petitioner has produced documents to support this position. However, the Authorities below have not addressed to this aspect, though the Divisional Commissioner in his impugned order has noted the argument of the Petitioner that he was in occupation of two huts out of which, in one unit, he was carrying on commercial activity. The argument of the

Petitioner is that assuming that the finding recorded by the Slum Rehabilitation Authority that the second unit being Shop No.2 possessed by the Petitioner was not utilised for commercial activity prior to the datum line, even so, the fact remains that the Petitioner was in possession of two different units and against the second unit i.e. Shop No.2, the Petitioner would be entitled for some alternative premises in lieu thereof. Counsel for the Builder, however, is contesting this position on the argument that the Petitioner was in possession only of one room, which is described as Room No.17 or Shop No.2.

2. The appropriate course, to my mind, is to direct the Slum Rehabilitation Authority to record a clear finding as to whether the Petitioner was in possession of two different units being Room No.17 in Parab Chawl, which was used for residence and Shop No.2 which is used for commercial activity. The Authority may afford opportunity to both the parties to adduce evidence to support their respective claims

and record a clear finding in this behalf and forward the same to this Court, so that, the other issues raised in the respective Writ Petitions can be adjudicated in the context of that finding.

3. The Authority to forward the said finding to this Court within three weeks from today. The parties to appear before the Slum Rehabilitation Authority on 13th August 2004 at 11.00 a.m. on which date, the Authority may proceed to decide the matter on the basis of the evidence produced by the respective parties or fix some other convenient date, but shall ensure that the finding on the aforesaid issue is returned within three weeks from today.

4. Post these matters in the week commencing from 6th September 2004. Till then parties to maintain status quo.

5. All concerned to act on the zerox copy of this order, duly authenticated by the Sheristedar of this Court".

. In pursuance of the order the parties were allowed to lead evidence in respect of Room No.17 and Shop No.2. The site inspection for physical verification was also carried out and the concerned authority heard the parties on 17.8.2004. The report dated 25.8.2004 was forwarded in a sealed cover to this court. The report was made available to the learned counsel appearing for the parties. The report clearly shows that the petitioner is not holding two separate hutments, one for residential and other for commercial use. It appears that the petitioner holds only one residential premises i.e. Room No.17, which he also uses for commercial purpose. The petitioner could not produce separate rent receipts in respect of Shop No.2 and Room No.17 in his name for the relevant period. After considering the entire material produced by the parties the concerned authority held that the petitioner is not in possession of Shop No.2 as claimed by him and, therefore, he is not entitled for commercial unit. I find absolutely no reason to discard the findings recorded by the concerned authority. In view of this, no interference in the impugned order is called for. The writ petition, therefore, fails and is dismissed as such.

(D.B.Bhosale, J.)